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No. 10-1326

Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHN FULTON,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Illinois courts, including the appellate court in this case, have held that the Fourth Amendment's exclusionary rule cannot be employed to suppress custodial statements given during a period of presentment delay. State courts have split on the issue, and, as a matter of federal law, statements given after the time an arrestee must be presented to a judge are subject to suppression. This case provides the Court with an opportunity to address the issue left open in *Powell v. Nevada*, 511 U.S. 79, 85 n.* (1994).

In cases such as *Katz v. United States*, 389 U.S. 347 (1967), this Court allocated the burden of proving the legality of a warrantless search or seizure on the prosecution. In this case, however, the State appellate court expressly allocated the burden to the defendant. State courts have divided on this question.

1. Whether a 75-hour delay between a warrantless arrest and presentment to a judge gives rise to the Fourth Amendment's exclusionary rule remedy when the arrestee made custodial statements during the presentment delay period.

2. Did the State appellate court deviate from Fourth Amendment requirements in holding that the defendant bears the burden of proving the illegality of a warrantless arrest?

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The order of the Illinois Supreme Court denying leave to appeal is reprinted at App. 58. The opinion of the Illinois Appellate Court is unpublished and is reprinted at App. 1. The judgment order of Circuit Court of Cook County is reprinted at App. 55.

JURISDICTION

On January 26, 2011, the Illinois Supreme Court entered judgment by denying petitioner's petition for leave to appeal from an Illinois Appellate Court decision. Petitioner did not seek rehearing. This petition has been filed within 90 days of the Illinois Supreme Court's judgment and is timely. This Honorable Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person . . . shall be compelled in any criminal case to be a witness against himself . . .

The Fourteenth Amendment § 1 to the United States Constitution provides in relevant part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .

In pertinent part, 725 ILCS 5/114-12 provides:

> (a) A defendant aggrieved by an unlawful search and seizure may move the court for the return of property and to suppress as evidence anything so obtained on the ground that:
>
> (1) The search and seizure without a warrant was illegal;
>
> * * *
>
> (b) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were unlawful shall be on the defendant. If the motion is granted the property shall be restored, unless otherwise subject to lawful detention,

> and it shall not be admissible in evidence against the movant at any trial.

STATEMENT OF THE CASE

1. Around 3:00 a.m. on March 10, 2003, Sid Taylor looked out a window at 5218 S. Peoria in Chicago, Illinois. He saw a blaze, and two individuals running. Q104-07. The charred remains of Christopher Collazo were discovered at the fire scene.

Collazo's friend, Marcus Marinelli, informed police that Collazo had been with him in a Chicago apartment until 9:00/9:30 p.m. on March 9, 2003. Q146-49. Telephone records corroborated Marinelli's account. R81.

On March 11, 2003, police interviewed Johnnitta "Precious" Griffin, age 17. R69-70. She informed police about an earlier (February) gun transaction involving Collazo and petitioner, but nothing about the murder. R52-53.

Three days later, Chicago Police Department Detectives John Zalatoris and Jim Breen brought Griffin to a police station for additional questioning. R56-59. Zalatoris confronted Griffin, and falsely implicated her in Collazo's kidnapping. R60-62, Q143-97. Later, Zalatoris and Breen screamed at Griffin; threw a chair; and paraded pictures of Collazo's dead body. R68. Breen threatened that Griffin would be charged with murder if she did not tell police what they

wanted to hear. R68. Griffin then said the following: Petitioner was upset because Collazo had robbed him. R69-75. Petitioner planned to go to Marisol Caldero's apartment near the intersection of Rockwell and Foster in Chicago on the evening of March 9, 2003. Petitioner asked about Collazo, and Griffin said that Collazo would be coming to Caldero's apartment around 9:30 p.m. via a certain bus. (The last bus stopped at the relevant intersection around 8:20 p.m. C145, Q146-49, 196, U7.) Petitioner said that he was going to "get" Collazo. While Griffin arrived at Caldero's apartment around 10:30 p.m., she did not see Caldero.

2. On March 18, 2003, Chicago Police Department detectives, acting without a warrant, arrested petitioner at his Chicago apartment. Over a period of more than three days, police interrogated petitioner, who was not presented to a judge until 75 hours after his arrest.

Prior to trial, petitioner litigated motions to quash arrest and suppress statements. Although the trial court granted a co-defendant's motion to suppress statements, it denied petitioner's motions.

3. A jury trial commenced that ended in a mistrial due to the State's failure to timely disclose a custodial statement alleged to have been made by petitioner (to a polygraph examiner). The State elected to retry petitioner.

Petitioner's custodial statements formed the centerpiece of his murder/kidnapping prosecution. At

trial and on appeal, petitioner alleged that the statements had been coerced and were untrue – a characterization corroborated by testimonial evidence, videotapes and phone records (showing a lack of contact claimed by Griffin).

Petitioner presented an alibi defense at trial. Petitioner's girlfriend, Yolanda Henderson, testified that petitioner took her to the University of Chicago Hospital on March 9, 2003. An apartment-complex videotape showed petitioner and Hendersen leaving petitioner's residence at 8:09 p.m. A hospital videotape displayed petitioner and Hendersen at the hospital by 8:33 p.m. U90. Hendersen testified that petitioner left the hospital around 10:30 p.m. This was corroborated by an apartment-complex videotape, exhibiting petitioner entering his residence around 10:57 p.m. Phone records had Hendersen calling petitioner at 11:29 p.m. The apartment videotape depicted petitioner exiting the apartment one-minute later. U93-95. The apartment videotape showed petitioner and Hendersen returning to petitioner's residence at 11:53 p.m. U95. There was no videotape of petitioner leaving the residence between 11:53 p.m. on March 9th and 3:00 a.m. on March 10th.

While petitioner's oral statements to the police (no videotaped confession was secured because a lawyer arrived at the police station and halted interrogation) included statements about the decedent having been placed in the trunk of petitioner's vehicle, forensic

examination of that vehicle revealed no incriminating evidence.

At petitioner's trial, Griffin retracted her statements regarding the alleged conversations between herself and petitioner. Phone records did not substantiate the account she provided to police.

The trial resulted in guilty verdicts on the offenses of first-degree murder, aggravated kidnapping and concealment of a homicide. The trial court imposed a 31-year prison term. App. 55.

3. Petitioner appealed, raising, *inter alia*, issues relating to the denial of his suppression motions. The Illinois Appellate Court affirmed the trial court's suppression hearing orders.[1] More particularly, the appellate court upheld the trial court's ruling regarding the voluntariness of petitioner's custodial statements. App. 33-40. The appellate court also held that the petitioner had the burden of proof at the suppression hearing, and that the trial court had not erred in finding probable cause for petitioner's warrantless arrest. App. 29-33. On the probable cause issue, the appellate court originally issued an opinion holding that the trial court had not clearly erred "regarding

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[1] While the State did not appeal petitioner's sentence, it moved for resentencing on grounds that Illinois law required the trial court to run the sentences for murder and kidnapping consecutively. The appellate court granted the State's request. App. 53. (The mandate has been stayed pending disposition of this petition.)

the existence of *reasonable suspicion* for the arrest of defendant." Pet. App. Ct. Pet. Reh'g. Petitioner moved for rehearing, pointing out that "reasonable suspicion" could not form the basis for an arrest. The appellate court subsequently issued a Modified Order Upon Denial of Rehearing ("modified order") that removed the "reasonable suspicion" language. See App. 1.

REASONS FOR GRANTING THE PETITION

After arresting petitioner without a warrant, Chicago Police detectives held petitioner at a police station for 75 hours before bringing him before a judge. During the detention, police officers repeatedly questioned petitioner, and petitioner uttered a series of statements that formed the foundation for a murder prosecution in which no physical evidence connected petitioner to the offense and petitioner presented a corroborated alibi defense.

Under Illinois law, the Fourth Amendment's exclusionary rule cannot be utilized to remedy a presentment delay violation. This case thus provides the Court with an opportunity to resolve a question that has divided State courts, and one that this Court expressly left open in *Powell v. Nevada*, 511 U.S. 79, 85 n.* (1994), *i.e.*, whether application of the Fourth Amendment's exclusionary rule is appropriate when a person who has been arrested without a warrant

makes statements during a period of presentment delay.

Equally worthy of this Court's review is the Illinois Appellate Court's resolution of a Fourth Amendment burden allocation question. While this Court has repeatedly held that the *prosecution* bears the burden of justifying warrantless police conduct, *e.g.*, *Katz v. United States*, 389 U.S. 347, 357 (1967), the appellate court held the opposite -- pronouncing that a *defendant* bears the burden of proof at a suppression hearing. App. 31. Again, State courts have divided on the issue of which party bears the ultimate burden of proof at a suppression hearing.

I. The Fourth Amendment's Exclusionary Rule Requires Suppression Of Custodial Statements Made During A Period Of Unreasonable Presentment Delay Following A Warrantless Arrest

a. Police do not have *carte blanche* to detain an individual who has been arrested without a warrant. Indeed, the "common law obligated an arresting officer to bring his prisoner before a magistrate as soon as he reasonably could." *Corley v. United States*, 129 S.Ct. 1558, 1562 (2009). The need for prompt presentment is vital to this country's criminal procedure, *id.* at 1562-63, Fed. R. Crim. P. 5(a), and is not a rule for rule's sake. Rather, it prevents, *inter alia*, secret detentions, secret interrogations and

warrantless arrests on less than probable cause. *Corley*, 129 S.Ct. at 1570.

In *Gerstein v. Pugh*, 420 U.S. 103, 113-14 (1975), this Court stressed that the justifications for non-involvement of the judiciary dissipate after a warrantless arrest. *Gerstein* held that the Fourth Amendment "requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Id.* at 114. *Gerstein* did not delineate what constitutes a "prompt" probable cause hearing.

In *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991), this Court emphasized that *Gerstein* was not a "blank check." This Court counseled that "judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*." *Id.* Concerning probable cause hearings occurring more than 48 hours after a warrantless arrest, *McLaughlin* declared:

> Where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an

> extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.

Id. at 56-57.

In *People v. Willis*, 215 Ill. 2d 517 (2005), the defendant confessed to police, but was not presented to a judge until more than 48 hours after his warrantless arrest. The trial court denied defendant's suppression motion. The appellate court reversed. *People v. Willis*, 344 Ill. App. 3d 868 (1st Dist. 2003), reasoning that Fourth Amendment attenuation analysis applies when a defendant has made custodial statements during a period of presentment delay. The Illinois Supreme Court took the case to examine the appropriateness of remedying a presentment delay violation with the Fourth Amendment's exclusionary rule. The Illinois Supreme Court reversed the appellate court on grounds that the Fifth Amendment's voluntariness test solely governs the admissibility of a confession obtained during a period of presentment delay. (*Willis* determined that a presentment delay may be a factor in the totality of the circumstances test applicable to voluntariness claims. See also *People v. Ballard*, 206 Ill. 2d 151 (2002).)[2]

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[2] Part of *Willis*' framework has eroded. In dismissing the federal approach (see *Mallory v. United States*, 354 U.S. 449

(Continued on following page)

In *Willis*, the Illinois Supreme Court observed that State courts had divided on whether it is appropriate to remedy a presentment delay violation with the Fourth Amendment's exclusionary rule:

> The vast majority of jurisdictions have approached this problem, like the trial court did here, as a simple matter of voluntariness.

(1957), *McNabb v. United States*, 318 U.S. 332 (1943)), *Willis* stated that Congress had "undermined the *McNabb-Mallory* rule in 1968 when it enacted 18 U.S.C. § 3501, which used voluntariness as the real gauge of admissibility." 215 Ill. 2d at 526 n. 1. *Willis* preceded *Corley* and *Dickerson v. United States*, 530 U.S. 428 (2000), which noted that 18 U.S.C. § 3501(a) and (b) represented an attempt to "overrule" *Miranda v. Arizona*, 384 U.S. 436 (1966). *Dickerson* held that the legislature could not trump a constitutional rule. In *Corley*, this Court determined that 18 U.S.C. § 3501(c) was designed to limit, but not eradicate, the *McNabb-Mallory* rule:

> We hold that § 3501 modified *McNabb-Mallory* without supplanting it. Under the rule as revised by § 3501(c), a district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was "reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]"). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was "made voluntarily and . . . the weight to be given [it] is left to the jury." *Ibid.* If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed.

129 S.Ct. at 1571.

See 2 W. LaFave, Criminal Procedure § 6.3(c), at 475 (2d ed.1999). In these jurisdictions, an inculpatory statement obtained during an unreasonably long delay between a warrantless arrest and a probable cause hearing must be suppressed only if it was involuntary. See, *e.g.*, *Bush v. Alabama*, 695 So.2d 70, 124 (Ala.Crim.App.1995); *Riney v. Alaska*, 935 P.2d 828, 834-35 (Alaska App.1997); *Peterson v. Indiana*, 674 N.E.2d 528, 538-39 (Ind.1996); *Michigan v. Manning*, 243 Mich.App. 615, 642, 624 N.W.2d 746, 759 (2000); *Nebraska v. Nissen*, 252 Neb. 51, 68, 560 N.W.2d 157, 171 (1997); *New Jersey v. Tucker*, 137 N.J. 259, 272, 645 A.2d 111, 117 (1994); accord *West v. Johnson*, 92 F.3d 1385, 1404 (5th Cir.1996); *United States v. Perez-Bustamante*, 963 F.2d 48, 53 (5th Cir.1992). See generally R. Eclavea, Annotation, *Admissibility of Confession or Other Statement Made by Defendant as Affected by Delay in Arraignment-Modern State Cases*, 1984 WL 263140, 28 A.L.R.4th 1121, § 6 (1984 & Supp.2005) ("Broad view that delay is merely a factor in determining admissibility of confession").

Other jurisdictions have approached this problem, like the appellate court here did, as a matter of attenuation. In these jurisdictions, an inculpatory statement obtained during such a delay must be suppressed unless it was attenuated from the taint of the *Gerstein/McLaughlin* violation. See, *e.g.*, *Chavez v. Florida*, 832 So.2d 730, 756-57 (Fla.2002); *Powell v. Nevada*, 113 Nev. 41,

> 46, 930 P.2d 1123, 1126 (1997); *Tennessee v. Huddleston*, 924 S.W.2d 666, 674 (Tenn.1996); accord *Anderson v. Calderon*, 232 F.3d 1053, 1071 (9th Cir.2000), *overruled on other grounds, Bittaker v. Woodford*, 331 F.3d 715 (9th Cir.2003); but see *Shope v. Maryland*, 41 Md.App. 161, 171, 396 A.2d 282, 288 (1979) (suppressing the defendant's confession after an unreasonably long delay, but characterizing that decision as "burning the barn to get rid of the mice"). In effect, these courts have fashioned what could be termed a "fruit of the poisonous illegal detention" rule. See G. Thomas, *The Poisoned Fruit of Pretrial Detention*, 61 N.Y.U. L.Rev. 413 (1986).

Willis, 215 Ill. 2d at 528-29; see also *McCormick on Evidence* § 156 (6th ed. 2006) (discussing divergent lower court approaches).

Non-application of an exclusionary rule as a remedy for a presentment delay violation is not in accordance with federal law. This Court, in exercises of supervisory power, has held that presentment delay gives rise to an exclusionary rule remedy. See *Corley*, 129 S.Ct. 1558; *Mallory v. United States*, 354 U.S. 449 (1957); *Upshaw v. United States*, 335 U.S. 410, 412-13 (1948); *McNabb v. United States*, 318 U.S. 332 (1943).

This Court has yet to resolve the conflict among the State courts. *Powell v. Nevada,* 511 U.S. 79, 85 n.* (1994), left the issue open:

> Powell does not complain of police failure to obtain a required arrest warrant. He targets a different constitutional violation-failure to obtain authorization from a magistrate for a significant period of pretrial detention. Whether a suppression remedy applies in that setting remains an unresolved question. Because the issue was not raised, argued, or decided below, we should not settle it here.

See also *id.* at 1286-87 (Thomas, J., dissenting) (suppression is inappropriate if a confession is not the product of presentment delay); *Willis,* 215 Ill. 2d at 528 ("Since *McLaughlin*, the Supreme Court has remained silent on this issue, declining to answer whether an inculpatory statement obtained during an unreasonably long delay must, for that reason, be suppressed."); *McCormick on Evidence* § 156 (6th ed. 2006) ("Controversy continues as to the appropriate effect of violation of the applicable requirement on the admissibility of a confession obtained during the delay.").

Relying on the Fourth and Fifth Amendments, petitioner challenged the length of his detention at the police station (75 hours). See App. 36-40; Pet. App. Ct. Brief, pp. 35-36, 37-41; Pet App. Ct. Reply Brief, pp. 6-12. On the presentment delay issue, the Illinois Appellate Court in this case adhered to *Willis*:

> The Illinois Supreme Court has held that the admissibility of a defendant's statement

> turns on whether it is voluntary and that defendant's prolonged detention is merely one factor to consider in determining whether an inculpatory statement was given voluntarily and should be admitted or suppressed. *People v. Willis*, 215 Ill. 2d 517 (2005); see also *People v. Bennett*, 376 Ill. App. 3d 554, 568 (2007). As noted earlier, in concluding that defendant's statement was voluntary, the trial court correctly applied this standard.

App. 36.

This case consequently provides this Court with the opportunity to resolve the divide over whether the Fourth Amendment's exclusionary rule is available to remedy a presentment delay violation. A positive answer to this question is the better one, but one not adopted below. Absent applying the Fourth Amendment's exclusionary rule, the prompt presentment requirement lacks "any teeth." *Corley*, 129 S.Ct. at 1570. As *Corley* explained:

> One might not care if the prompt presentment requirement were just some administrative nicety, but in fact the rule has always mattered in very practical ways and still does. As we said, it stretches back to the common law, when it was "one of the most important" protections "against unlawful arrest." *McLaughlin*, 500 U.S. at 60-61, 111 S.Ct. 1661 (SCALIA, J., dissenting). Today presentment is the point at which the judge is required to take several key steps to foreclose Government overreaching: informing

> the defendant of the charges against him, his right to remain silent, his right to counsel, the availability of bail, and any right to a preliminary hearing; giving the defendant a chance to consult with counsel; and deciding between detention or release. Fed. Rule Crim. Proc. 5(d); see also Rule 58(b)(2).
>
> In a world without *McNabb-Mallory*, federal agents would be free to question suspects for extended periods before bringing them out in the open, and we have always known what custodial secrecy leads to. See *McNabb*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819. No one with any smattering of the history of 20th-century dictatorships needs a lecture on the subject, and we understand the need even within our own system to take care against going too far. "[C]ustodial police interrogation, by its very nature, isolates and pressures the individual," *Dickerson*, 530 U.S. at 435, 120 S.Ct. 2326, and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed, see, *e.g.*, Drizin & Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C.L.Rev. 891, 906-907 (2004).

129 S.Ct. at 1570.

The rationale for the exclusionary rule – to deter police misconduct – is also present when police deliberately prolong detention (so additional evidence may be gathered) without bringing a suspect before a judicial officer. Police station interrogation is

precisely the type of circumstance forming the basis for often-made brutality claims against the Chicago Police Department. See, *e.g.*, *Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) ("a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department"); *Wilson v. City of Chicago*, 6 F.3d 1233, 1236 (7th Cir. 1993) (civil rights plaintiff "had 'testified that he was punched, kicked, smothered with a plastic bag, electrically shocked, and forced against a hot radiator throughout the day . . . until he gave his confession' . . . his testimony had been corroborated by extensive contemporaneous medical and photographic evidence") (citation omitted); *People v. Canon*, 293 Ill. App. 3d 634 (1st Dist. 1997) (surveying evidence relating to a claim of "systematic abuse of suspects" by Chicago police). Moreover, the traditional reason for not applying the exclusionary rule – *e.g.*, the involvement of the judiciary in the search and seizure process, see *Leon v. United States*, 468 U.S. 897 (1984) – is not present when police arrest a person *sans* a warrant and then delay bringing him before a judicial officer.

b. In addition to being subject to suppression under the Fourth Amendment, petitioner's custodial statements were coerced in violation of the Fifth Amendment. Indeed, the Illinois Appellate Court here did not ascribe appropriate weight to 75-hour presentment delay. The appellate court paid short shrift to the inherently coercive circumstance of spending multiple nights in a bedless police station interview

room. Lack of sleep alone is coercive, if not "torture." Other circumstances in this record – including petitioner's youth (age 18 when arrested) and lack of serious criminal record; the absence of family or counsel during the interrogations; the multiple interrogations and readings of *Miranda* warnings (signaling to petitioner that he was a suspect); the failure to leave petitioner alone after he denied involvement in the crime; and absence of objective evidence corroborating petitioner's statements – all point to the serious constitutional error in the appellate court's ruling. See, *e.g.*, *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) ("coercion can be mental as well as physical, and . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition").

II. The Prosecution Has The Burden Of Establishing The Legality Of A Warrantless Seizure

a. In a series of cases, this Court has stated that the party relying on an exception to the warrant requirement bears the burden of proof. See *United States v. Robinson,* 414 U.S. 218, 243 (1973); *Vale v. Louisiana*, 399 U.S. 30, 34 (1970); *Chimel v. California*, 395 U.S. 752, 762 (1969); *Katz v. United States*, 389 U.S. 347, 357 (1967); *United States v. Jeffers,* 342 U.S. 48, 52 (1951). Thus, once a defendant in a criminal case demonstrates implication of his Fourth Amendment rights as a result of a warrantless intrusion, the prosecution bears the ultimate

burden of proof of establishing the reasonableness of the warrantless conduct.

By holding that a defendant "bears the burden of proof at a hearing on a motion to suppress," App. 31, the Illinois Appellate Court in this case held the exact opposite of this Court's precedent, as well as United States Courts of Appeal decisions, which have noted that once a person establishes the fact of a warrantless arrest, the burden shifts to the prosecution. See, *e.g.*, *O'Rourke v. Hayes*, 378 F.3d 1201, 1208-09 (11th Cir. 2004); *United States v. Carhee*, 27 F.3d 1493, 1496 (10th Cir. 1994).

The Illinois Supreme Court has issued inconsistent pronouncements on the burden allocation question. In support of the proposition that a defendant bears the burden of proof at a suppression hearing, the appellate court cited *People v. Gipson*, 203 Ill. 2d 298, 306 (2003), App. 31, which stated that a defendant has the "ultimate burden of proof" at a suppression hearing.[3] In *People v. McNeal*, 175 Ill. 2d 335, 345 (1997), and *People v. Foskey*, 136 Ill. 2d 66, 75 (1990), however, the Illinois Supreme Court held that the *State* bears the burden of proving a warrant requirement exception.

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[3] In allocating the burden of proof to the defendant, *Gipson* cited 725 ILCS 5/114-12(b). Obviously, a State statute cannot preempt federal constitutional requirements. See *Dickerson v. United States*, 530 U.S. 428 (2000).

In addition, the Illinois Appellate Court has internally divided on the issue. For example, *In re Mario T*, 376 Ill. App. 3d 468, 473-74 (1st Dist. 2007), stated:

> "[O]nce a defendant challenges a warrantless search, it becomes the State's burden to show that the search" is constitutional. *People v. Rushing*, 272 Ill.App.3d 387, 390 (1995). "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967). "'[T]he burden is on those seeking the exemption to show the need for it.'" *Coolidge v. New Hampshire*, 403 U.S. 443, 455, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564, 576 (1971) quoting *United States v. Jeffers*, 342 U.S. 48, 51, 72 S.Ct. 93, 95, 96 L.Ed.2d 59, 64 (1951) . . . Thus, it was the State's burden to justify the pat-down search of the respondent.

See also *People v. Johnson*, 368 Ill. App. 3d 1073, 1083 (2nd Dist. 2006); *People v. Williams*, 315 Ill. App. 3d 22, 38 (1st Dist. 2000).

Professor LaFave has identified a burden allocation dichotomy which depends upon the presence of a warrant:

> With respect to the issue which is usually central in a motion to suppress hearing – the

> reasonableness of the challenged search or seizure – most states follow the rule which is utilized in the federal courts: if the search or seizure was pursuant to a warrant, the defendant has the burden of proof; but if the police acted without a warrant the burden of proof is on the prosecution. The warrant-no warrant dichotomy is typically explained on the ground that when the police have acted with a warrant "an independent determination on the issue of probable cause has already been made by a magistrate, thereby giving rise to a presumption of legality," while when they have acted without a warrant "the evidence comprising probable cause is particularly within the knowledge and control of the arresting agencies." . . . Moreover, it is said that "[w]ithout such a rule there would be little reason for law enforcement agencies to bother with the formality of a warrant."

Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 11.2(b) (4th ed. 2010).

Not all States, however, follow the rule that the prosecution bears the ultimate burden of proof in cases involving warrantless police conduct. Like the Illinois Appellate Court below, "some states place the burden of proof uniformly upon the defendant." *Id.* (citing *State v. McKenzie*, 186 Mont. 481, 608 P.2d 428 (1980); *State v. Dow*, 256 Mont. 126, 844 P.2d 780 (1992)); see also *People v. Ellis*, 190 Misc.2d 98, 104-05, 737 N.Y.S.2d 232, 237 (N.Y. Co. Ct. 2001).

This Court should grant certiorari to resolve the conflict in authority over the important and recurring Fourth Amendment burden allocation issue presented here. The burden of proof allocation question made a difference. The probable cause question was hotly disputed. In fact, as discussed below, the appellate court saw fit to modify its opinion on the probable cause issue. When all is said and done, it is evident that petitioner's warrantless arrest was not supported by probable cause. If the appellate court had properly allocated the burden to the State, the result would not have been the same.

b. Reasonable suspicion and probable cause are two different things, and give rise to two distinct outer boundaries of permissible police conduct. As this Court has recognized, "[r]easonable suspicion is a less demanding standard than probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990). "'Probable cause' . . . refer[s] to the quantum of evidence for the belief justifying the [seizure], to be distinguished from a lesser quantum such as 'reasonable suspicion.'" *Griffin v. Wisconsin*, 483 U.S. 868, 878 n. 4 (1987). Without question, police cannot arrest a person based on "reasonable suspicion." See *Dunaway v. New York*, 442 U.S. 200, 213 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Henry v. United States*, 361 U.S. 98, 101 (1959).

The relevant facts here are uncontroverted: Not a single person, reliable or otherwise, actually placed petitioner at the crime scene; no physical evidence

connected petitioner to the offense; and petitioner did not make pre-arrest admissions. The most that can be said on this record is that police *suspected* petitioner. But suspicion that a person committed a crime – even when reasonable – cannot justify a full-blown arrest. See *Florida v. Royer*, 460 U.S. 491, 499 (1983) (plurality) ("Detentions may be 'investigative' yet violative of the Fourth Amendment absent probable cause.").

In its original opinion, the Illinois Appellate Court ruled that the trial court had not clearly erred "*regarding the existence of reasonable suspicion for the arrest of defendant.*" Pet. App. Ct. Pet. Reh'g. On rehearing, petitioner asserted that this language underscored that he had been arrested on reasonable suspicion, as opposed to probable cause. The appellate court thereafter issued a modified opinion, stating as follows:

> For the reasons previously discussed there was no clear error committed by the trial court and under our *de novo* review, because the facts known to the officers at the time of defendant's arrest were sufficient to lead a reasonably cautious person to believe that defendant had committed a crime . . . we conclude the police had probable cause to arrest defendant.

App. 33.

The language-change did not rework the objective reality that police arrested petitioner on reasonable suspicion, not probable cause. That quantum of

suspicion cannot validate a warrantless arrest. While the appellate court recognized its mistake, the steps it took to rectify the error – substituting "cautious" for "suspicion" – did not change the core constitutional violation, *i.e.*, a warrantless arrest based on reasonable suspicion.

To be sure, the Illinois Appellate Court ultimately stated that "the facts known to the officers at the time of the defendant's arrest were sufficient to lead a reasonably cautious person to believe defendant had committed a crime." App. 32. The court, however, did not identify the particular "facts known to the officers." What the officers knew at the time was that the petitioner might have had a motive. But motive is just a mental state – without more, it does not supply a reasonably objective basis upon which to conclude that a person *committed* a crime.

c. Motions to quash arrest and suppress evidence are heard on a daily basis in the lower courts, and review of such motions is common appellate staple. It is crucial that the lower courts adjudicate Fourth Amendment-based motions by employing uniform national standards. This Court's review is necessary to reconcile the conflict discussed above, and ensure a consistent body of law on an important and recurring question. Granting certiorari is also necessary to correct a dangerous lower court decision – one that sustained a warrantless arrest on less than probable cause. See *Brenninger v. United States*, 338 U.S. 160, 180 (1949) ("uncontrolled search and

seizure is one of the first and most effective weapons in the arsenal of every arbitrary government").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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FOURTH DIVISION
September 23, 2010

No. 1-07-0058

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOHN FULTON, Defendant-Appellant.	) Appeal from the) Circuit Court of) Cook County) No. 03 CR 8607) Honorable) James M. Schreier) Judge Presiding.

MODIFIED ORDER UPON
DENIAL OF REHEARING

Following a jury trial, defendant John Fulton was convicted of first-degree murder, aggravated kidnapping, and concealment of a homicidal death. He was sentenced to 31 years imprisonment for first-degree murder, 25 years for aggravated kidnapping, and 3 years for concealment of a homicidal death, to be served concurrently. Defendant now appeals his conviction and raises the following four issues: (1) whether the police had probable cause to arrest defendant; (2) whether defendant's motion to suppress statements was properly denied; (3) whether

the evidence was sufficient to find him guilty beyond a reasonable doubt; and (4) whether the State made improper comments during closing arguments that resulted in defendant being denied a fair trial. The State has raised an additional issue on appeal: (1) whether defendant's concurrent sentences are void. For the following reasons, we affirm defendant's conviction, vacate his concurrent sentences, and remand to the circuit court for re-sentencing.

BACKGROUND

The victim in this case, Christopher "Chris" Collazo was murdered on March 10, 2003. Approximately one month earlier, in February 2003, Chris had been involved in a gun deal with defendant that had been arranged with the help of a mutual friend named Johnitta Griffin, known as "Precious." Precious and defendant had met on a party-line in January and the two had dated for approximately one month and had had sex a few times. Precious had known the victim, Chris since December.

A few days before Valentine's Day, defendant had contacted Precious about purchasing a gun and asked her if she knew anyone who would sell him one. Precious called Chris who told her he knew a couple of people. Precious then gave defendant's telephone number to Chris, who called defendant, making it a three-way call to talk about the gun transaction. Precious told Chris to do whatever he wanted, and just not to do it at her house.

Chris told his friend, Marcus Marinelli, about his conversation with Precious and asked him if he wanted to help rob the person who wanted to purchase the gun. Chris and Marinelli developed a plan to rob defendant and selected a location on Diversey Avenue in Chicago to conduct the robbery. Chris and Marinelli went to the location and Marinelli unscrewed the light bulb inside the hallway so that it would be dark. Defendant arrived at the location and when he came into the hallway with Chris, Marinelli grabbed defendant, put a gun to his head, and told him to lie down, which defendant did. Marinelli demanded money and defendant gave him a wad of bills, which Marinelli presumed to be $300 which was the asking price for the gun. Chris and Marinelli ran away to the house of a friend named "Wood" where they discovered they had been given $14 in singles.

Shortly thereafter, Precious got a telephone call from a person identifying himself as defendant's brother, Dwight, who said that he and defendant had been robbed of $250 by Chris and that they had better get their money back. Precious was also given a message by Chris, through her aunt, with whom she lived. Chris said that defendant had tried to stick him up, did not have all the money, and that Chris had turned the tables on defendant and robbed him of $15. Chris subsequently bragged in multiple telephone calls about robbing defendant. In one of those calls, co-defendant, Anthony "Riff" Mitchell answered defendant's phone, and Chris called Mitchell and defendant "bitches" and bragged about robbing

defendant. Mitchell told Precious that if Chris kept calling, they would have to get after him. Precious told Chris to stop.

Defendant maintained that $300 had been taken from him. On or about March 7, 2003, a few days before Chris was found dead, defendant called Precious and told her he wanted his $300 back and if she did not give him the money, "her boy," meaning Chris, was going to get hurt.

On March 9, 2003, Chris called Precious at home, at around 3:00 p.m., to tell her that he wanted to hang out that night at the house of Marisol Caldero, who is Precious's Godmother. Precious told Chris that she was going to Caldero's house, but not until later that evening. At 4:00 p.m., defendant called Precious asking about the money. When Precious told defendant that she did not have the money, he said that he was going to come after either her or Chris. Precious told defendant she might be seeing Chris later that night and gave defendant information as to where Chris was going, how he might get there, what he would be wearing and his physical description. Precious arrived at Caldero's house at around 10:30 p.m. Caldero told her that Chris had called about 15-20 minutes earlier and said he would be calling back later to see if Precious had arrived. Precious sat in the window and watched, but Chris never called back and never made it to Caldero's house.

At approximately 3:00 a.m. on March 10, 2003, Sid Taylor looked out his window into the alley

behind his apartment and saw a fire burning. He called 911 and the fire department arrived and extinguished the fire. Police officers responded to the scene and found a body, lying on a partially charred cardboard box. The body was later determined to be Chris's body. He was bound and gagged around the mouth, and covered with some type of plastic material. His hands were behind his back, and his hands and legs were wrapped together.

Officer Schmitz interviewed Sid Taylor, who told him that he saw two male blacks standing by the fire, one wearing a red jacket, and the other wearing a black jacket. Investigator Dunigan photographed the victim and the scene. He recovered items of possible evidentiary value including the cardboard box, blood from the cardboard box, and blood from the snow.

Dr. Mitra Kalelkar performed the autopsy of the victim on March 10, 2003. When she received the body, it was covered in black plastic which was partially burnt. Some of the victim's clothing was also burnt. The victim, Chris, was 18 years old, was 5'7" and weighed 148 pounds. There were small pieces of cardboard material around his body which gave off a strong odor of gasoline. His hands, feet, waist and mouth were duct taped. Dr. Kalelkar found a sock inside Chris's mouth, acting as a gag, which matched a sock on one of Chris's feet. The duct tape around his wrists was criss-crossed several times. When that tape was removed, there were pressure marks on the wrists. Chris had been wearing three t-shirts and

three layers of pants and shorts. His outer blue jeans were pulled down.

Dr. Kalelkar's external examination revealed large bruises around the eyes, both of which were swollen shut. Chris suffered multiple lacerations and bruises about the head and body indicative of blunt force injuries. One area of injury on the back of the head was round and uniform and could have been caused by an object such as a nail.

The internal examination revealed hemorrhages to the eyes which could have been caused by direct trauma or asphyxia. Being choked or having a gag in the mouth could have produced those injuries. There were also hemorrhages underneath the scalp. The multiple hemorrhages to the head would have been produced by direct blows to it. There were also hemorrhages to the chest area.

Dr. Kalelkar opined that the cause of Chris's death was multiple blunt trauma force injuries and a significant contributing factor was asphyxiation due to a gag in his mouth. She stated that the injuries could have been caused by two different kinds of blunt objects or different parts of the same blunt object. Toxicology results were negative for alcohol, opiates and cocaine. Dr. Kalelkar determined that Chris was dead when he was set on fire.

Detective Edward Winstead and Detective Leonard Rolston were assigned to investigate the death of Christopher Collazo. Detective Winstead was working as a violent crimes detective in Area One on March

11, 2003. He was working the second watch that day which was from 8:30 a.m. to 5:00 p.m. When Detective Winstead came into work that day, Chris's friend, Marcus Marinelli, was there waiting to be interviewed. Marinelli had been brought to the station by the police who had learned from Chris's family that Marinelli had been with Chris at his home on the evening before he was found dead.

Marinelli told Detective Winstead that he went home after he left Chris's house and did not leave with Chris. The detectives asked Marinelli for any information he could give them about who would have wanted to harm Chris. Marinelli told the detectives about the robbery that he and Chris had carried out in February 2003 on three guys from the south side, and gave the detectives the details. Marinelli explained to the detectives that he believed that the murder might have been revenge for the robbery. Marinelli showed Detectives Winstead and Rolston the building on Diversey where the robbery had occurred. Marinelli also guided the officers to the apartment of Marisol Caldero, who was friends with both the victim and a woman named "Precious" who could give the detectives more information regarding a "go-between" in the setting up of the robbery.

Detectives Winstead and Rolston took Marinelli home and returned to Marisol Caldero's apartment. Caldero was shocked to learn from the detectives that Chris was dead. Calder had heard about the robbery and gave the detectives Precious's real name, Johnitta

Griffin, her telephone number, and her address on the north side of Chicago.

The detectives went to Precious's home. When Precious opened the door, she told the detectives that Caldero had called her and told her that the detectives were coming and had also told her that Chris was dead. Precious confirmed what Marinelli had told the detectives, that she had set up a meeting between Chris and defendant so that Chris could sell defendant a gun. Precious referred to defendant as her ex-boyfriend, and told the detectives his age, his weight, where he lived – 500 East 33rd Street, and the kind of car he was driving, which was a silver Aurora.

Precious claimed that the last time she had heard from defendant was on Friday when he reminded her that she owed him $300. Precious denied knowing anything about Chris's death. When Detective Winstead asked Precious further questions about defendant, including associates of his, and whether she had any contact with defendant on the evening of March 9th or the early morning of March 10th, she said she had not heard from him and she became evasive. Detective Winstead later testified that, specifically, Precious would not look at the detectives, kept her head down and turned her head as they asked questions regarding what occurred two nights earlier, and that this was different than how she was talking when she was discussing the robbery. Detective Winstead noted on his general progress report (GPR) that Precious would have to be re-interviewed.

The detectives left Precious's home and drove to the vicinity of 500 East 33rd Street where they toured the area and saw a silver Aurora. They ran the license plate number which showed the car registered to a John Fulton, but with a different address – 8900 Crandon. The detectives went into the building at 500 East 33rd Street and the receptionist told them that John Fulton was a new tenant. The detectives returned to Area One headquarters.

On the night of March 13, 2003, Detectives John Zalatoris and Jim Breen went to ask Precious some more questions. As Precious was coming home with friends shortly before midnight, and getting out of the car, the detectives told her they wanted to ask her some more questions. Precious agreed and talked to them in the squad car and then they drove off to the police station.

On March 14, 2003, Precious was interviewed by Assistant State's Attorney (ASA) Jake Rubinstein at Area One. Detective Rolston was present for a portion of the conversation. Precious was informed that she was a witness, and not a suspect. She gave an oral statement and then agreed to a handwritten summary of her statement. Both statements were substantially the same. Precious reaffirmed her previous statement to Detective Winstead regarding how she knew defendant and the victim, Chris, and how she had set up the gun purchase in February. She also told ASA Rubinstein that Chris had called her after the gun transaction and told her that he had robbed defendant because defendant had tried to rob him.

Chris had taunted defendant and Anthony "Riff" Mitchell, calling them bitches, and bragging about robbing them. Mitchell said that if Chris kept calling, they would go after him. Precious told ASA Rubinstein that defendant spoke to her on the telephone on March 7, 2003 and told her that he wanted his $300 back and that if she did not give him the money, "her boy," meaning Chris was going to get it, meaning get hurt.

Precious said that she spoke to Chris on Sunday, March 9, 2003, and they made plans to meet later at Marisol Caldero's apartment on Foster Avenue in Chicago. Defendant then called Precious and asked if she was going to see Chris that day. Precious said that she was and told defendant about her plans to meet Chris at Caldero's house. She told defendant where Caldero's house was and what buses Chris would take to get there. Defendant called back later and Precious gave him more information including what Chris might be wearing and that he had graphics in his hair. Defendant said he was going to get Chris.

Precious's statement continued by stating that she got to Caldero's house around 10:30 p.m. Caldero told her that Chris had called shortly before she arrived, but he never showed up. Precious told ASA Rubinstein that she set up Chris because of the threats that defendant made to her and because she feared for her own life.

After Precious gave her statement to ASA Rubinstein, Detective Winstead drove her to 26th and California where she met with ASA Sandra Navarro and testified before the grand jury. Precious's testimony before the grand jury was substantially the same as her statement to ASA Rubinstein.

On the morning of March 18, 2003, Detective Robert Girardi and Detective Rolston went to defendant's building at 500 East 33rd Street in Chicago, looking for defendant and his car, a silver Aurora. The building was an upscale high-rise apartment building with security for the building and parking lot. Detective Girardi noted that the building had security cameras at the front door but did not believe that there were any cameras at the back door. The detectives first looked for defendant's car which they found parked down the street. They then went to defendant's apartment and knocked on the door. After a minute, defendant asked who it was and opened the door. A female was also in the apartment, whom the detectives later learned was Yolanda Henderson.

Defendant was arrested and taken to Area One headquarters. His car was also transported there by Detective Girardi. Later forensic testing of defendant's car revealed that co-defendant Antonio Shaw's fingerprints were found underneath the spare tire cover from the trunk.

Defendant signed a consent to search his apartment and car. He was given his *Miranda* rights. Defendant was shown pictures of Chris (while he was

alive), Marinelli, and Precious. Defendant identified them as being involved in the robbery where he attempted to purchase a firearm and said that Precious was the go-between. The conversation was short and did not involve a discussion of any aspects of the murder investigation. Defendant was calm and cooperative. Detective Girardi had no further contact with defendant that day.

Later that day, March 18, 2003, defendant was interviewed by Detectives Breen and Zalatoris. Detective Breen read defendant his *Miranda* rights. Initially, defendant denied any involvement in the death of Chris. Defendant was brought to the Police Department Forensic Services Division polygraph unit by Detectives Breen and Zalatoris. There, Officer Bartik spoke to defendant alone and explained to him what was involved in a polygraph examination. He also told defendant that taking a polygraph examination was voluntary and showed him the consent form, which defendant signed.

As Officer Bartik began going through the pretest interview, defendant made an inculpatory statement to him. Defendant told Officer Bartik that Chris had stolen money from him when he tried to purchase a gun from Chris. He also told Officer Bartik that on Saturday, March 8, 2003, he had a telephone call with Precious who told defendant that Chris was going to a party on Sunday, March 9, 2003. He spoke to "Stick" about beating up Chris. Stick was later determined to be Antonio Shaw. Defendant then spoke to Anthony "Riff" Mitchell about beating up Chris. Mitchell said

if he went, he would have to kill him. Defendant also told Officer Bartik that Precious had told him that Chris was going to be going to a party the following evening and told him how defendant would be taking a bus there. Defendant spoke to Mitchell and Shaw about beating up Chris. Defendant further stated that, pursuant to directions from Precious, they drove up to the north side in defendant's car and saw Chris get off the bus. They beat Chris and put him inside defendant's trunk. They drove around and found a dark street. They took Chris out, bound him with duct tape that defendant kept in his car, and put a plastic bag over his head. They placed Chris in the trunk and drove down the Dan Ryan Expressway to the south side. They found a refrigerator box and put Chris inside. Defendant stated that he carries a gasoline can in his car in case he runs out of gas. They poured gasoline on the box and lit the box on fire.

Because this conversation brought new information to light, Officer Bartik went and informed the detectives that defendant had given a statement. They then decided that, at that particular juncture, the polygraph examination was not necessary. After defendant gave this statement, defendant and detectives took a drive to view the various crime scenes and arrived back at Area One headquarters on March 19, 2003 at approximately 2:00 a.m.

Defendant, after being advised of his rights, then gave a statement to ASA McRay Judge that was consistent with his previous statements. At least one

of the detectives was always present during the interview, At the end of their conversation, ASA Judge spoke to defendant out of the presence of the detectives. Defendant leaned over and said, in a very low voice, "what if I were to tell you that everything I just told you I made up." ASA Judge asked defendant if he was telling him what happened or if he was giving him a hypothetical, Defendant responded, "No that's what happened." ASA Judge asked defendant why he would make up a story like he had just told him. Defendant responded that he wanted to shut the detectives up. Defendant told ASA Judge he was not intimidated by, or fearful of, the detectives. ASA Judge asked defendant if he was going to stick with his story of making it all up. Defendant responded yes, that he had been with his girlfriend on the evening in question, that she had been sick, and that he had taken her to the hospital.

ASA Judge asked defendant to back up a little and he then talked to defendant about the story he had given to ASA Judge earlier. He asked defendant if he remembered ASA Judge asking him what he, Mitchell, and Shaw were wearing the night they killed Chris. Defendant said he remembered. ASA Judge reminded defendant that he had told him that the three of them had on a white hoodie, a red hoodie and a black hoodie. Defendant said that the detectives had not told him to say that, but he had made it up because he knew that either Mitchell or Shaw had a black hoodie, and because defendant had a red hoodie and a white hoodie at home, which the

detectives could go to his home and confirm. Defendant told ASA Judge that his story would be that he let his buddy borrow his hoodie. ASA Judge told defendant this made no sense and asked why he would go to such an extent to think through what the three individuals were wearing that night. Defendant responded that that was his thought process. ASA Judge then asked defendant, what if he were to tell defendant that on the evening the victim was found burning in the alley, a man was looking out his window and saw two offenders standing by the flames, one wearing a red top and one wearing a black top. Defendant looked at ASA Judge and said, "that wouldn't be very good for me, would it?" ASA Judge told defendant it wouldn't, but defendant said he was sticking to his story that he had made it all up.

With respect to defendant saying he had made up the story, ASA Judge believed that defendant was lying, based upon his assessment of defendant's demeanor. To ASA Judge, defendant appeared very calculating in what he was saying, and defendant was very manipulative throughout the conversation. He told defendant that this was a continuing investigation and left the room.

ASA Judge then spoke to Detectives Zalatoris and Breen, and informed them of the alibi statement that defendant had given. He told the detectives that defendant had mentioned that there was a videotape. ASA Judge also told ASA Jake Rubinstein what had transpired with defendant and told him about defendant's alibi. ASA Judge also told ASA Rubinstein

that he had told the detectives to go and look at the videotapes. ASA Judge was off for the next three days and had no further involvement in the investigation.

On March 19, 2003, at 12:30 p.m., ASA Rubinstein arrived at Area One to continue the investigation into Chris's death. He spoke to Detective Rolston and Detective Winstead for 30-45 minutes regarding the status of the investigation of Chris's murder. Detectives Rolston and Winstead were the same two detectives that ASA Rubinstein had seen on March 14, 2003, prior to his speaking to Precious. The detectives apprised him of what had been happening over the past few days. ASA Rubinstein learned that defendant was in custody relating to this murder.

After being briefed by the detectives, ASA Rubinstein and both detectives drove to the north side of Chicago to speak to Precious's Godmother, Marisol Caldero. After speaking with her, ASA Rubinstein returned to Area One and had a conversation with defendant that lasted about an hour. Defendant told ASA Rubinstein about the gun deal and the robbery. Regarding where he was on the night of Chris's murder, defendant said he was with his girlfriend, Yolanda, at the University of Chicago Hospital, and that he had been with her at the hospital until the early morning hours. Defendant also said they went home at about 3:00 a.m., went to sleep, and never went out again. Defendant told ASA Rubinstein to talk to Yolanda and to check with the hospital. Defendant said that there were security tapes that would verify his story.

ASA Rubinstein asked defendant about what he had told ASA Judge earlier. Defendant said that his confession to ASA Judge was a lie and that he said that stuff "because the fat detective was pissing him off." ASA Rubinstein asked defendant how he would know all of those things and how did he know what to say, if they were not true. Defendant responded that he had overheard the detectives talking and that was how he knew what had happened.

On March 20, 2003, the following day, ASA Rubinstein returned to Area One at 11:00 a.m. He spoke to Detectives Winstead and Rolston. Then the three of them went to the 5200 block of South Peoria where the victim's body had been found burning. They next went to the University of Chicago Hospital. They returned to Area One later that afternoon. ASA Rubinstein spoke to both defendant and co-defendant Anthony Mitchell, who was also in custody at Area One. Defendant did not provide any further information. Afterwards, ASA Rubinstein believed that there were still other things that the police needed to investigate.

On March 21, 2003, ASA Rubinstein returned to Area One to work on another case. While he was there, Detectives Girardi and Struck gave him an update on the case involving defendant. ASA Rubinstein had another conversation with defendant at 8:30 a.m. After again advising defendant of his constitutional rights, ASA Rubinstein said, "okay let's hear it. Let's get the truth." Defendant said, "All that stuff

I told you before, that was all a lie, I'm going to give you the truth now."

Defendant said he did not lie about the robbery and that it was all exactly how it happened. ASA Rubinstein then asked defendant about the hospital story and defendant said it was a lie that he used because he knew his girlfriend, Yolanda, would back him up because she was his fianceé. Defendant also told ASA Rubinstein that Yolanda was his baby's mother and she would be a good witness for him.

Defendant admitted telling Precious he had lost $300 to Chris and that if he did not get his money back, she or Chris were going to get hurt. Defendant explained to ASA Rubinstein that, on the day of the murder, he got a call from Precious telling him that Chris was going to be corning over to Marisol Caldero's house later that night, and that that would be a chance for defendant to get Chris. He said that he and Yolanda got to the emergency room at 8:45 or 9:00 p.m., that they waited for awhile, and that he then left the hospital in his car, drove to the neighborhood to go pick up Shaw and Mitchell, who had a baseball bat. Defendant said that while driving to the north side, he was getting directions from Precious.

Defendant further told ASA Rubinstein that when they got to the place he was directed to, they parked the car and waited. When they saw Chris walking down the street, they recognized him. They got out of the car and beat him up. Mitchell and defendant took turns hitting Chris with the bat. They

put him in a laundry bag defendant had in his trunk because defendant did not want to get blood in his car. They then put Chris in the trunk. They drove to another alley somewhere on the north side. Defendant did not remember exactly where the the alley was, but he told ASA Rubinstein that it was the same alley that he had showed the detectives earlier when he went out with them to show them where everything happened. Defendant told him that they took Chris out of the trunk and decided to tape him up. Defendant told ASA Rubinstein that he believed that Chris was still alive. Defendant said he and Shaw propped Chris up while Mitchell did the taping. Defendant said that Mitchell put a rag in Chris's mouth and wound tape around it.

They next put Chris in the trunk and drove to a gas station to buy some gasoline to burn Chris up. Defendant gave Shaw money to buy the gasoline and a gas can. They drove onto the expressway back to the south side, to an alley behind an abandoned building. The three of them took Chris out of the trunk. They found a large cardboard box and put Chris's body into it. Defendant and Shaw poured gasoline on the box and Mitchell lit it. Defendant told ASA Rubinstein that he drove Mitchell and Shaw back to the neighborhood, then went back to the hospital and picked up Yolanda and that was the end of his night.

ASA Rubinstein asked defendant why he had changed his story. Defendant said that Mitchell could get him and that he would not be safe, even in jail.

Defendant said that Mitchell and Shaw were tight and were probably going to blame him. He told ASA Rubinstein that he was not going to let them do that and that he was going to tell ASA Rubinstein what he did and did not do.

ASA Rubinstein was able to speak to defendant alone at various points during the three day period of March 19-21, 2003. Defendant stated that he had been treated well by the detectives, that no one threatened him or promised him anything, and that he was saying this because he wanted to. ASA Rubinstein offered defendant the opportunity to have his confession videotaped and made arrangements, with defendant's permission, for the videographer to come. Defendant then changed his mind.

On March 21, 2003, Detective James Winston of the bomb and arson division went to a garage at 8055 S. Crandon where he retrieved a red plastic gas container. The owner of the home was defendant's grandfather.

Defendant, along with Antonio Shaw and Anthony Mitchell, was indicted by a grand jury on multiple counts of first degree murder, aggravated kidnapping, and concealment of a homicidal death. Prior to trial, defendant filed motions to quash arrest and suppress evidence.

On May 19, 2004, a hearing was held on the probable cause aspect of defendant's motions. The hearing was a combined one with that of motions

filed by co-defendants Mitchell and Shaw. Co-defendant Shaw's motion to suppress statements was sustained and the State dismissed the charges against him. Defendant's motions to quash arrest and suppress evidence were denied.

On June 28, 2004, defendant filed a motion to suppress statements alleging that he was threatened, physically beaten, and was forced to repeat facts about the case that had been told to him by the police.

On December 21, 2004, February 28, 2005, and April 12, 2005, the hearing was held on defendant's motion to suppress statements. Following argument, the trial court denied defendant's motion to suppress statements. The trial court concluded:

> "This is a question of credibility. The court accepts the credibility as presented by the State's witnesses and the defendant himself said that his interrogators treated him well. The court finds that the statement was made after a proper presentation of his Miranda Rights and that the defendant knowingly, intelligently and voluntarily waived his rights and made a voluntary statement."

A jury was selected on October 3, 2005, but a mistrial was declared when the parties became aware of defendant's previously unknown polygraph statement. The trial judge gave defendant the option of either excluding the statement from evidence and proceeding to trial, or taking a continuance. Defendant

chose to dismiss the jury and re-open his motion to quash arrest and suppress evidence.

Defendant subsequently filed a motion to reconsider the prior rulings denying his motion to quash and suppress evidence, and his motion to suppress statements. Defendant challenged the trial judge's finding of probable cause based on information in the telephone records that Detective Rolston had found while out on disability. Defendant additionally contended in his motion that it was unbelievable that no police report had been filed regarding the polygraph examination.

On April 28, 2006, a hearing was held on whether defendant's inculpatory statement to Officer Bartik, the polygraph examiner, and the telephone records found by Detective Rolston, had any effect on the trial judge's previous denial of defendant's motion to quash and to suppress statements. The State noted that defendant knew he went down for a polygraph examination and did not raise it in his own motion. The trial judge noted that no polygraph examination was actually given and that the question was whether the omission was a deliberate lie or simply a mistake or inaccuracy. The trial court also stated that an argument could be made that defendant's leaving the interrogation room and being again advised of his rights was actually a benefit to defendant. The State argued that even if the police had made some mistakes, it did not mean that there was a conspiracy against defendant, especially since the evidence at issue generally favored the State. At the conclusion of

the hearing, the trial judge stated that nothing he had heard changed his mind about his prior rulings. Specifically, the trial judge found that defendant's statement to Officer Bartik was voluntary, and that there was no intentional withholding of Bartik's testimony by the State. The trial judge denied defendant's motion to reconsider.

Defendant and co-defendant, Anthony Mitchell were tried simultaneously, but with separate juries. Precious testified consistently with her previous statements regarding her being the conduit for the gun purchase between Chris and defendant. She also testified that Chris was bragging about robbing defendant, and was calling Mitchell and defendant names. Precious also testified that Mitchell called her and wanted her to tell Chris to stop, and that if Chris did not stop, they would have to get after him. Precious further testified that she recalled talking to defendant on the telephone, on or about March 7, 2003, and defendant said he wanted his $300 back from her and if she didn't give it to him, "her boy," meaning Chris was going to get it. She also testified that her conversation with defendant could have occurred on March 8, 2003, but not on March 9, 2003. Precious's telephone records were introduced during trial showing that, in fact, she made nine telephone calls to defendant on March 8, 2003.

Also at trial, Precious either recanted, or testified that she did not recall, those portions of her statements, to both ASA Jake Rubinstein and the grand jury, in which she had stated that she spoke to

defendant on March 9, 2003 and had told him she was meeting Chris later at Marisol Caldero's house, and had also told defendant what buses Chris would be taking there, what Chris might be wearing, and that he had a graphic cut in his hair. She also denied defendant telling her that he was going to get Chris. Although, at trial, Precious denied having the conversation with defendant on March 9, 2003, she did acknowledge that she told ASA Rubinstein that the conversation with defendant occurred on March 9, 2003.

On cross-examination, Precious testified that she initially told detectives that she never spoke to defendant on the day of Chris's murder. She also testified that, after the murder, she was walking home from school and the police asked if they could talk to her. She testified that they took her to the police station and threw her in a room. She claimed that she told police she did not know anything about the murder, and that a detective told her she was lying. She also stated that the detective told her that when he came back she better have something. She testified that the detective told her that he knew she had helped somebody kidnap Chris and kill him, and that he got this information from Marcus Marinelli. Precious said she did give defendant a description so that he would recognize Chris for the gun transaction. Precious also claimed that a detective yelled at her and showed her gruesome photos of the victim's body. However, this interview occurred on March 14, 2003 and the jury learned that photographs of the victim's

body were not available until after March 20, 2003. Precious also claimed at trial that the detective told her that she set the whole thing up and that if she did not tell him what he wanted to hear, she would be charged with murder. She said she was scared because she was seventeen and had never been to a police station before. She also testified that, at some point, she realized that the only way of getting out of that room was to go along with their story. She stated that she now knows that it would have been impossible for Chris to get off the Foster Avenue bus at 9:30 p.m. on a Sunday because the bus stops running at a certain time. According to Precious, the reason she now knows that is because someone told her while she was waiting for a Kimball bus that day and she had to take a cab to Marisol Caldero's house.

On redirect examination, the State confronted Precious with the fact that, although she had just testified that when the detectives had brought her to the police station, she had never been arrested before, in fact, she had been arrested just twelve days before and also had been to a police station before. She agreed that she was alone with ASA Rubinstein and told him that nobody had threatened her or promised her anything to give a statement, and she was giving the statement of her own free will. Also, Precious testified that she spoke privately with ASA Navarro, and failed to tell her that any part of her statement was not true and, instead, told her it was all true. Precious also conceded that she had agreed to testify before the grand jury and that she was not forced or

threatened to do so. Precious testified that she had not spoken to defendant since Chris died, but that she had spoken to all his attorneys. After Precious testified before the grand jury, she never came to the State's Attorney's Office or spoke to an ASA to say that she lied in any of her prior statements.

ASA Jake Rubinstein testified that when he spoke to Precious, she said she had been treated well by the police and that no one had threatened her or promised her anything. He also testified that Precious told him that she had set up Chris because of threats that defendant made to her and she feared for her life.

Defendant called several witnesses to testify. Richard Lentz, employed by the CTA, testified for defendant that, based on the bus schedules, the last Foster Avenue bus would have arrived at the corner of Foster Avenue and Lincoln Avenue at 8:21 p.m. Mr. Lentz was not on the bus, however, and did not know exactly what time the bus actually arrived there. In addition, he testified that Western Avenue, located at 2400 West, has buses that run 24 hours a day.

Roxanne Wellwerts, a Comcast Cable employee testified that the cable statement for defendant indicated that a pay-per-view movie was ordered on March 9, 2003 called "Black and Wild" which started at 11:00 p.m. She had no information on whether an individual actually watched the movie.

Yolanda Henderson, defendant's girlfriend and mother of his child, testified that she was aware of

the gun purchase that defendant was involved in and that he had been robbed. Yolanda was also aware that the gun transaction had been set up by Precious, but she did not know Precious and did not know Precious had dated defendant. Yolanda also testified that after defendant was robbed, someone was calling him and threatening him.

On March 9, 2003, Yolanda lived with defendant and their baby at defendant's apartment. She testified that on that date, she and defendant went to the University of Chicago Hospital because she was sick. At some point, defendant left the emergency room and went home to wait for her call. Defendant later returned to the hospital to pick her up. They then went home and defendant stayed home for the remainder of the night until the following morning when he left for school. Yolanda identified photographs and a videotape showing: (1) defendant and her leaving their apartment building at 8:09 p.m. on March 9, 2003; (2) defendant and her arriving at the hospital at 8:33 p.m.; (3) defendant entering the apartment building at 10:57 p.m.; (4) defendant leaving the apartment building at 11:30 p.m.; (5) defendant and her returning to their apartment building at 11:53 p.m.; and (6) defendant and her leaving the apartment building the following morning at 7:56 a.m.

On March 10, 2003, despite having been just diagnosed with strep throat, Yolanda took defendant's car to Jiffy Lube, pursuant to his request, to get the

oil changed. The car was also vacuumed. A few days after defendant's arrest, his attorneys came out to speak to her.

Detective Rolston testified that, in connection with this investigation, he had requested subpoenas for telephone records. He was subsequently injured in the line of duty in July 2003 and went on a medical leave of absence. From time to time, people from the department would drop off mail that he put in a box because he was inactive. Precious's telephone records were not received by the department until April 8, 2003 and were forwarded to him at some point. He found the records in a sealed envelope in a box in his garage in September 2005.

In rebuttal, ASA Investigator Eugene Shepard testified that there were no security cameras in the back area of defendant's apartment building. Detective Winstead testified that he watched the videotape of the emergency room with Yolanda Henderson. Yolanda told him she believed defendant dropped her off at the apartment and did not come up. She said that because she was ill she slept in the living room, fell asleep immediately, and that defendant woke her in the morning.

Following closing arguments, the jury found defendant guilty on all counts. Defendant's motion for a new trial was denied. After a hearing in aggravation and mitigation, the trial court sentenced defendant to 31 years for first-degree murder, 25 years for aggravated kidnapping, and 3 years for concealment

of a homicidal death, to be served concurrently. This appeal followed.

ANALYSIS

I. Probable Cause

Defendant first contends on appeal that his confessions must be suppressed because the police lacked probable cause to arrest him and he was arrested on mere suspicion only. The parties disagree on the standard of review to be applied by this court; accordingly, we shall first clarify that issue.

Although we review *de novo* the trial court's ultimate ruling on a motion to suppress, we must give "great deference" to the trial court's factual findings and uphold those findings unless they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001), citing *Ornelas v. United States*, 517 U.S. 690, 699, 134 L. Ed. 2d 911, 920, 116 S. Ct. 1657, 1663 (1996); accord *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009) and *People v. Pittman*, 211 Ill. 2d. 502, 513 (2004). It should also be noted that, in reviewing the trial court's ruling, we may consider the entire record, including trial testimony. *People v. Gilliam*, 172 Ill. 2d 484, 501 (1996). As to the issue of probable cause, review of historical fact is for clear error committed by the trial court, while review of the ultimate question as to the existence of probable cause for the arrest requires *de novo* review. *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 1663, 134 L. Ed. 2d 911, 920.

The Illinois Supreme Court has clearly set forth the law defining probable cause. See, *e.g.*, *People v. Hopkins*, 235 Ill. 2d at 472 (and citations therein). It is well settled that a warrantless arrest will be deemed lawful and valid only when probable cause to arrest exists. *People v. Kidd*, 175 Ill. 2d 1, 22 (1996); *People v. Bauer*, 393 Ill. App. 3d 414, 426 (2009). Probable cause exists when "'the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.'" *People v. Jackson*, 232 Ill. 2d 246, 274-275 (2009), quoting *People v. Wear*, 229 Ill. 2d 545, 563-64 (2008). The standard requires that the police officer have more than mere suspicion but does not require that the officer have evidence sufficient to convict. *People v. Long*, 351 Ill. App. 3d 821, 825 (2004). Whether probable cause exists depends upon the totality of the circumstances at the time of the arrest. *Jackson*, 232 Ill. 2d at 275. "'In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *People v. Love*, 199 Ill. 2d 269, 279 (2002), quoting *Brinegar v. United States*, 338 U.S. 160, 175, 93 L. Ed. 1879, 1890, 69 S. Ct. 1302, 1310 (1949). The existence of probable cause is governed by common-sense considerations, and the calculation concerns the probability of criminal activity, not proof beyond a reasonable doubt. *People v. Montgomery*, 112 Ill. 2d 517, 525 (1986). We further note that probable cause can be

based upon evidence that would be inadmissible at trial. *People v. Belton,* 257 Ill. App. 3d 1, 6 (1993), citing *People v. Marino,* 44 Ill. 2d 562, 573 (1970). "Courts must remain cognizant of the observation that the police 'often must act upon a quick appraisal of the data before them, and the reasonableness of their conduct must be judged on the basis of their responsibility to prevent crime and to catch criminals.' [Citations.]" *People v. Belton,* 257 Ill. App. 3d at 6. A defendant bears the burden of proof at a hearing on a motion to suppress. *People v. Gipson,* 203 Ill. 2d 298, 306 (2003).

Defendant contends that probable cause did not exist because there was nothing to place him at either Precious's location, or at the location where Chris's body was found, which would serve to corroborate the information the police possessed at the time of arrest. Defendant also notes that there was no explanation as to how Chris's body could be found some five hours later, and fifteen miles from Precious's house. After examining the totality of the circumstances known to the police officers when the defendant was apprehended, we conclude that the trial judge's ruling that the officers had probable cause to arrest defendant should be affirmed.

The record reflects that the day after the victim's badly burnt body was found, police spoke to Marcus Marinelli who told them about a person, whose identity he did not know, who had been recently robbed at gunpoint by the victim and Marinelli himself. Marinelli also told police that he believed that Chris's

murder might have been revenge for the robbery. Marinelli further told police that a woman nicknamed Precious had set up the gun purchase that turned into a robbery. Further investigation led police to Johnitta "Precious" Griffin who told police that John Fulton attempted to buy a gun from the victim but was robbed at gunpoint by him. Defendant threatened to get the victim and just prior to the murder, Precious gave defendant information on how to find Chris, who was never seen alive again. Furthermore, the information given by Marinelli and Precious was consistent and corroborated by the vehicle registered to defendant at his address. Under these circumstances, it was reasonable for the police to believe defendant was responsible for Christopher Collazo's murder.

Based on the totality of the circumstances known to police, they possessed probable cause to arrest defendant. As noted earlier, in reviewing the trial court's ruling, a reviewing court may consider the entire record, including trial testimony. *Gilliam*, 172 Ill. 2d at 501. As such, we find that the facts known to the officers at the time of defendant's arrest were sufficient to lead a reasonably cautious person to believe that defendant had committed a crime. Defendant's contention that his warrantless arrest was not supported by probable cause is unavailing. Since the defendant's arrest was not improper, his argument that his confessions should have been suppressed as the fruit of an unlawful arrest and his

unlawful detention without probable cause is without merit.

For the reasons previously discussed there was no clear error committed by the trial court and under our *de novo* review, because the facts known to the officers at the time of defendant's arrest were sufficient to lead a reasonably cautious person to believe that defendant had committed a crime (see *People v. Jackson,* 232 Ill. 2d at 274-275), we conclude the police had probable cause to arrest defendant. The trial court's denial of defendant's motion to quash arrest was not erroneous, and we affirm the decision.

II. Voluntariness of Confession

We next turn to defendant's argument that his statement should have been suppressed because it was involuntary. The factual determinations of the trial court are reviewed under a manifestly erroneous standard, while the trial court's ultimate decision on the motion to suppress is reviewed *de novo People v. Luedemann,* 222 Ill. 2d 530, 542 (2006). The defendant provides several reasons to support his claim that his statement was involuntary, which we summarize as follows: (1) because the testimony of the police detectives was not worthy of belief, the trial court's conclusion on the facts was manifestly erroneous; (2) the coercive nature of the custodial interrogation of 75 hours renders the confession involuntary because his will was overborne; and (3) because of the internal falsehoods in defendant's statement to ASA

Rubinstein, the confession must have been coerced. We shall address each argument in turn.

Credibility of Witnesses

During the hearing that was held on defendant's motion to suppress statements, the State called ASA McRay Judge, Detective Robert Girardi, ASA Jake Rubinstein, and Detective James Breen to testify. After the State rested, defendant testified on his own behalf. Detective John Zalatoris testified in rebuttal.

Following argument, the trial court denied defendant's motion to suppress statements. In concluding that defendant gave a voluntary statement, the trial court considered "the length of time in custody before the statement was made as a factor, among others, in determining voluntariness." In making his ruling, the trial judge stated as follows:

> "This is a question of credibility. The court accepts the credibility as presented by the State's witnesses and the defendant himself said that his interrogators treated him well. The court finds that the statement was made after a proper presentation of his *Miranda* rights and that the defendant knowingly, intelligently and voluntarily waived his rights and made a voluntary statement. Motion to suppress statements denied."

A confession is voluntary if it is the product of free will and not the product of inherently coercive atmosphere of a police station. *People v. Nicholas,* 218

Ill. 2d 104, 118 (2005). "To determine whether the defendant's confession was voluntary, we consider the totality of the circumstances surrounding it, including the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; the duration of the interrogation; the presence of *Miranda* warnings; the presence of any physical or mental abuse; and the legality and duration of the detention – that is, whether the detention violated the fourth amendment as construed by *Gerstein* and *McLaughlin*." *Nicholas*, 218 Ill. 2d at 118. The State has the burden of establishing the voluntariness of the defendant's confession by a preponderance of the evidence, and the trial court's determination of the voluntariness of a confession will not be disturbed on review unless it is against the manifest weight of the evidence. *Gilliam*, 172 Ill. 2d at 501.

A review of the record shows that the evidence established that defendant, an intelligent 18-year-old who had been arrested before, was arrested with probable cause, taken to the police station, repeatedly advised of his rights, and that his statements were not coerced in any way. The testimony of the detectives and Assistant State's Attorneys was consistent and credible. In contrast, defendant's testimony was internally inconsistent and unbelievable. It was contradicted by the rebuttal testimony of Detective Zalatoris. It was also properly rejected by the trial judge.

On a hearing on a motion to suppress, it is the function of the trial court, not this reviewing court, to determine the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence. See, *e.g., People v. Fickett,* 204 Ill. App. 3d 220, 226 (1990). We reject defendant's assertion that the testimony of the police detectives was not worthy of belief and his assertion that the trial court's conclusion on the facts was manifestly erroneous.

Length of Custodial Interrogation

Defendant has additionally contended, however, that the coercive nature of the custodial interrogation of 75 hours renders the confession involuntary because his will was overborne. As the State initially points out, defendant's own testimony contradicts his arguments that his confession was the result of police coercion and that his will was overborne. Defendant testified that he gave the statement to ASA Rubinstein because the detective told him Mitchell was being cooperative and was going home, and they were giving him one last chance to cooperate. Therefore, defendant's own words established that he did not confess based on threats, physical abuse, being told what to say, or because his will was overborne.

The Illinois Supreme Court has held that the admissibility of a defendant's statement turns on whether it is voluntary and that defendant's prolonged detention is merely one factor to consider in

determining whether an inculpatory statement was given voluntarily and should be admitted or suppressed. *People v. Willis,* 215 Ill. 2d 517 (2005); see also *People v. Bennett,* 376 Ill. App. 3d 554, 568 (2007). As noted earlier, in concluding that defendant's statement was voluntary, the trial court correctly applied this standard.

The record shows that defendant's custodial stay at Area One was due to thorough police investigation extended by defendant's own actions. Defendant was arrested based on probable cause at 5:30 a.m. on March 18, 2003. He initially denied any involvement in the victim's murder. Later that day, however, defendant made an inculpatory statement to Officer Bartik. After making his statement to Officer Bartik, Detectives Breen and Zalatoris drove defendant north and defendant showed them the route he had taken on the night of Chris's murder. Defendant then made a statement to ASA McRay Judge the following morning at 5:00 a.m. on March 19, 2003. After giving that statement, however, when alone with ASA Judge, defendant recanted his inculpatory statement and claimed that he had an alibi – that he was at the hospital with his girlfriend. Police pursued defendant's claim and they conducted additional investigation on this case.

Defendant contends that the instant case is indistinguishable from *People v. Sams,* 367 Ill. App. 3d 254 (2006). In *People v. Sams,* the defendant went to the police station voluntarily but was held for over 72 hours. The trial court found that defendant was

unreasonably detained "despite repeated denials of involvement in the offense." *People v. Sams*, 367 Ill. App. 3d at 258. The trial court also stated that the police could have released defendant and brought him back instead of "leaving him there for days *maintaining his innocence.*" (Emphasis added.) *Sams*, 367 Ill. App. 3d at 257. Therefore, the trial court found that the "process eventually wore the defendant down and created a lack of free will." *Sams*, 367 Ill. App. 3d at 258. The trial court granted the defendant's motion to suppress and the appellate court, after noting that the trial court's factual determinations are awarded great deference, decided not to disturb those findings, and concluded that the trial court's decision was not against the manifest weight of the evidence. *Sams*, 367 Ill. App. 3d 257-58.

The instant case is factually distinguishable from *People v. Sams* because it does not involve a defendant who maintained his innocence for days. See also *People v. Woodard*, 367 Ill. App. 3d 304, 315 (2006) ("Defendant's changing stories and dead-end leads only perpetuated her own detention, as they necessitated further investigation and only increased the detectives' suspicion."). Based on the totality of the circumstances, we conclude that defendant was not unreasonably detained and therefore, defendant's argument to the contrary does not provide a basis for disturbing the trial court's finding that defendant's statements were voluntary.

Defendant has additionally contended that "it also bears noting that after [he] gave the oral confession

to ASA Rubinstein," and after his 75-hour detention, his attorney arrived and he then "withdrew his agreement [to] memorialize his oral confession by videotape." Defendant then states that to his "way of thinking," this sequence of events strongly suggests an overborne will that was returned to some semblance of rational thought once [defendant's] attorney arrived. But it has been noted that "regret in hindsight does not render a confession involuntary." *People v. Johnson*, 154 Ill. 2d 356, 363 (1993).

Defendant, citing *People v. Cannon*, 293 Ill. App. 3d 634 (1997), has also raised the argument that the trial court's granting of co-defendant Antonio Shaw's motion to suppress statement is relevant to defendant's case because it shows a pattern of police misconduct. *Cannon* is inapposite because the defendant sought to relitigate a motion to suppress on retrial based on "special circumstances," and where the defense claimed it stood ready and able to prove new evidence of police misconduct, specifically that "the police officers who questioned him systematically tortured [28] other suspects to obtain confessions at or near the time [defendant] was questioned. *People v. Cannon*, 293 Ill. App. 3d 634, 640 (1997). Here the experienced trial judge gave individual consideration to the interaction between the police and 15-year-old Antonio Shaw and to the interaction between the police and defendant. In the factual context of the instant case, the record supports the trial judge's conclusion that defendant's statements were voluntary.

Internal falsehoods in defendant's confession to ASA Rubinstein

Defendant has raised an additional argument in support of his contention that his confession was involuntary. He asserts that because the most vital facts contained in the confession are objectively wrong, *i.e.*, false, the confession must have been coerced. Defendant compares portions of his statement, primarily related to the timing of certain events, with the evidence presented at trial and contends that his confession contained falsehoods. He argues that he must have been coerced into stating these falsehoods by the police, so that his statement would be consistent with what Precious told them voluntarily. Based on the totality of the circumstances, the existence of any inconsistency between the confession and the other evidence goes to the weight of the confession, not to its admissibility. *People v. Furby*, 138 Ill. 2d 434, 454-56 (1990).

For the foregoing reasons, we conclude the trial judge's ruling that defendant's statement was made voluntarily was supported by the evidence. Thus, we will not disturb the trial court's ruling. The trial court's ruling on the mixed question of fact and law of voluntariness is affirmed after *de novo* review by this court.

III. Sufficiency of Evidence

Defendant has also contended on appeal that the evidence was insufficient to prove him guilty beyond a reasonable doubt. We disagree.

When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000). Rather, when a defendant challenges the sufficiency of the evidence, the issue becomes "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" (Emphasis in original.) *People v. Cunningham*, 212 Ill. 2d 274, 278-79 (2004), quoting *Jackson v. Virginia*, 443 U.S. 307, 318, 61 L. Ed.2d 560, 573, 99 S. Ct. 2781, 2788-89 (1979). In making this determination, this court must consider that the trial court heard and saw the witnesses and, therefore, was in a better position to judge their credibility, to determine the weight to be accorded their testimony, and to decide the inferences to be drawn from the evidence. *People v. Wiley*, 205 Ill. 2d 212, 227 (2001). Thus, it is the responsibility of the trier of fact to determine the credibility and weight to be given to witness testimony. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). This responsibility includes resolution of conflicts in the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Moreover, these determinations of the trier of fact are to be accorded "great weight." *In re A.H.*, 195 Ill. 2d 408, 425 (2001). This court "will not reverse a conviction

unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). In assessing whether the evidence was sufficient to sustain a verdict, we must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005).

Defendant's main argument is that "the State's case rested entirely on the trier of fact believing the content of [defendant's] statement and Precious's statement, yet both statements are objectively false and incredible." Defendant again contends that because evidence at trial conflicts with Precious's statement and defendant's confessions, the statements of Precious and defendant are rendered inherently false.

Defendant's position is that his entire confession was "fed" to him by law enforcement authorities. He argues that his statement to ASA Rubinstein that he got a call from Precious on the night of the murder telling him that Chris was going over to Caldero's apartment is contradicted by the fact that the telephone records do not support and, in fact, contradict this statement. Defendant concludes that because there was "no other means of Precious contacting [defendant]," his statement must be false. Defendant also contends that because there is no activity on his telephone after midnight, he could not have been getting calls from Precious giving him directions to Caldero's apartment.

As the State correctly notes, the jury was not obligated to believe that defendant's statement was false. In an age of portable cell phones, where one can own and use multiple phones or an anonymous pay-as-you-go phone, in addition to pay phones, the telephone records here cannot be deemed to compel but one conclusion, that defendant's statement was false. The recollection of witnesses may have been off regarding the time line of events. Moreover, the telephone records were inculpatory, in part, because they established some contact between the parties, including nine telephone calls from Precious to one of defendant's two cell phones, on the day before the kidnapping and murder.

Defendant additionally argues that the videotapes from the hospital and the apartment building establish that he could not have committed this crime and are inconsistent with his statement to ASA Rubinstein that after defendant spoke to Precious, he left the hospital, picked up Anthony Mitchell and Antonio Shaw and drove to the north side of Chicago.

With respect to the videotape evidence, assuming the jury did find that, based on the videotapes, that defendant was at the hospital, went home, returned to the hospital to pick up Yolanda, and went home again, the jury could have concluded that there was still time for defendant to have committed this crime. As we have noted, the resolution of conflicts in the evidence is the jury's responsibility. The State argued that "at 11:54 that's where (sic) the defendant's alibi ends." The jury could have believed that

after defendant took Yolanda home, he left again to commit the murder.

Defendant raises numerous similar arguments as to several additional pieces of evidence. He essentially asks this court to reweigh the evidence. A reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact. *People v. Ramos*, 339 Ill. App. 3d 891, 901 (2003). The matters raised on appeal involve credibility determinations and resolutions of the evidence which were raised at trial and rejected by the jury. Where evidence presented is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution. *People v. Sutherland*, 223 Ill. 2d at 242. Our review of all the evidence, does not require this court to engage in "a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom." *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007).

After carefully reviewing the record, we conclude that the totality of the evidence presented at trial overwhelmingly established that defendant planned and participated in the murder of Christopher Collazo in retaliation for being robbed by him. Defendant did not dispute that he had robbed the victim during a gun purchase set up by Precious. Following the robbery, a series of communications between Chris and defendant ensued. Precious testified that Chris bragged about robbing Fulton and Mitchell, while Fulton and Mitchell said if Chris did not stop calling they would have to get after him. Defendant's motive

to get back at Chris for robbing him and his threats to get Chris provided some additional evidence of defendant's guilt. Precious's statements were corroborated by the multiple, detailed confessions given by defendant. Defendant's statements were corroborated by additional evidence admitted at trial. The manner of Chris's death and the injuries he sustained support the conclusion that defendant committed the murder as an act of revenge. Viewing the totality of the facts, in the light most favorable to the prosecution, we do not find the evidence so unreasonable, improbable, or unsatisfactory that it creates reasonable doubt of defendant's guilt.

IV. The State's Closing Argument

Defendant also contends that the State made nine improper remarks during its closing argument. Specifically, defendant claims that "the prosecution engaged in a scorched-earth, groundless, attack on the defendant, the evidence of his innocence, and defense counsel for the singular purpose of winning a case rather than serving justice."

The parties disagree on the standard of review regarding the propriety of closing remarks. Defendant, citing *People v. Wheeler,* 226 Ill. 2d 92, 121 (2007), states it is *de novo.* The State, however, citing *People v. Cisewski,* 118 Ill. 2d 163 (1987) asserts that the propriety of the arguments will be upheld absent a clear abuse of discretion. This court has previously noted that the appropriate standard of review for this

issue was not clear. See, *e.g.*, *People v. Johnson*, 385 Ill. App. 3d 585, 601 (2008) (noting application of *de novo* standard of review by court in *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) and application of abuse of discretion standard in *People v. Blue*, 189 Ill. 2d 99, 128 (2000)); see also *People v. Smith*, 2010 WL 1840299, 2 (Ill. App. First Dist., 2010) Same) and *People v. Phillips*, 392 Ill. App. 3d 243, 274, 911 N.E.2d 462, 491 (2009) (same). Because the outcome would have been the same under either standard of review, however, neither the *Smith* court nor the *Phillips* court further addressed the apparent conflict, nor has it been resolved by our supreme court. Recently, this court has applied the *de novo* standard of review. See, *e.g.*, *People v. Allen* 2010 WL 2133891, 11 (Ill. App. First Dist., 2010); *People v. Shelton*, 2010 WL 1960898, 11 (Ill. App. First Dist., 2010); *People v. Ramos*, 396 Ill. App. 3d 869, 874 (First Dist., 2009); but see *People v. Averett*, 381 Ill. App. 3d 1001, 1007 (1st Dist. 2008) (applying an abuse of discretion standard) *People v. Love*, 377 Ill. App. 3d 306, 313 (1st Dist.2007) (applying an abuse of discretion standard). In the instant case, we need not resolve the issue because, as was the case in *Smith* and *Phillips*, we conclude that under either standard, the prosecutor's comments were not improper.

The State is given considerable latitude in making closing arguments, and it may respond to comments that clearly invite a response. *People v. Hall*, 194 Ill. 2d 305, 346 (2000). In addition, the State may comment on the facts of the case and legitimate

inferences that may be drawn therefrom, and may discuss subjects of general knowledge and common experience or common sense. *People v. Ligon,* 365 Ill. App. 3d 109, 123 (2006). On review, we must examine the arguments of both the State and the defense in their entirety, with the challenged portions placed in their proper context. *People v. Cisewski,* 118 Ill. 2d 163, 175-76 (1987). A reviewing court is not required to assume the jury accepted a remark's most damaging interpretation. *People v. Brooks,* 246 Ill. App. 3d 777, 784 (1993). The trial court may cure errors with jury instructions on the law or by informing the jury that counsel's arguments are not evidence. *People v. Tijerina,* 381 Ill. App. 3d 1024, 1032-33 (2008). Improper comments made by the State in closing argument requires reversal and a new trial if the remarks constituted a material factor in defendant's conviction. *People v. Linscott,* 142 Ill. 2d 22, 28 (1991).

As the State correctly notes, defendant has forfeited his right to raise an argument as to five of the nine comments included in his brief, because he failed to object to them at trial. See *People v. Enoch,* 122 Ill. 2d 176 (1988) (both an objection at trial and a written post-trial motion raising the issue are necessary to preserve an alleged error for review.) In his reply brief, defendant has asserted that he is entitled to relief under the rule of plain error.

The plain error doctrine, which is applied as a means of ameliorating the harshness of strict application of the forfeiture rule, provides a narrow and limited exception. *People v. Harvey,* 211 Ill. 2d 368, 385 (2004). "Plain errors or defects affecting

substantial rights may be noticed although they were not brought to the attention of the trial court." *People v. Graham,* 206 Ill. 2d 231, 238 (2003), quoting 134 Ill. 2d 615(a). We are mindful that, in order to "determine whether a purported error is 'plain' requires a substantive look at it. But if, in the end, the error is found not to rise to the level of a plain error as contemplated by Rule 615(a), the procedural default must be honored." *People v. Johnson,* 208 Ill. 2d 53, 64, 803 N.E.2d 405, 412 (2003).

To obtain relief under the plain error doctrine, a defendant must first show that a clear or obvious error occurred. *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007). The plain error rule allows this court to review trial errors not properly preserved (1) when the evidence in a criminal case is closely balanced, or (2) where the error is so fundamental and of such magnitude that the accused was denied a right to a fair trial. *People v. Harvey,* Ill. 2d at 387. In the instant case, the plain error doctrine is not applicable because the evidence here was not closely balanced, nor did the challenged comments constitute errors of such magnitude that they clearly deprived defendant of a fair trial. We shall now address those four errors which were properly preserved for review.

Defendant first argues that the prosecutor improperly commented that somebody had to call defendant and tell him there had been a change in plans because Precious knew that the victim was still at home at 9:19 p.m. on the night of his murder.Defendant contends that this was a fact not supported

by the evidence and that some of the evidence at trial precludes this conclusion. Specifically, defendant asserts that, because the victim called Precious at 6:28 p.m. and 6:46 p.m. on the night of his murder, if Precious had called defendant about the victim's plans, the call would have naturally occurred shortly after this time, yet there is no record of any such call. Second, defendant notes that the victim was still at home at 9:19 p.m. when he called Caldero's house to say he was running late and would not be coming until Precious confirmed her arrival at Caldero's house. Because Precious was still *en route* to Caldero's house at 8:51 p.m., defendant contends that she had no idea of the victim's change in plans and, therefore, it was impossible for defendant to learn of the victim's change in plans.

Defendant bases his argument on *his* inference from the evidence, but it is certainly not the only inference to be drawn and overlooks other evidence. It is also a fair inference that Precious had a greater involvement than she admitted or testified to, or that other phones were involved other than those introduced at trial. The prosecutor's argument taken as a whole, that the telephone records did not preclude other communications between the parties, constituted proper argument.

The next argument we address is whether the prosecutor's comment that Precious moved to Wisconsin because she was afraid of defendant was improper. When placed in the proper context, the comment was not improper and was invited by

defense counsel's argument. In his closing argument, defense counsel argued that Precious:

> " * * * had the courage to come down from Wisconsin, come to this courtroom, get on that witness stand, take an oath, and tell look (*sic*) you ladies and gentlemen in the face and tell you I flat out lied, folks. I would have told those policemen anything they wanted to hear to get out of that room. I would have testified to anything in front of that grand jury to get out of that room.
>
> And, you know what, I know that could you (*sic*) be charged with perjury. I know I could be prosecuted. I am willing to take that risk because I am the reason that these police officers began, you know, to go after John Fulton. Knowing all of that, I'm here to tell you folks the truth.
>
> And they want to throw mud at her because she had the courage to come here and do that."

In response, the prosecutor stated:

> "Why would you need Johnitta Griffin come all the way down here from Wisconsin if she didn't come here to tell the truth? She came down here for the same reason most witnesses came to this courtroom because she was subpoenaed to come here because she was ordered to come here.
>
> As [the other prosecutor] point[ed] out, it that (*sic*) little trauma act on the witness

stand was all an act. She doesn't want to face this defendant.

Why do you think she moved to Wisconsin?"

When the comments raised by defendant are examined in the context of the record on review, the comments were not only responsive, but fair comments from the evidence. At trial, Precious repudiated portions of her written statement and her grand jury testimony that incriminated defendant for the murder. Precious's prior statements included comments that defendant had also threatened her. She told ASA Rubinstein that she set up Chris because of threats that defendant made to her and she feared for her life. Thus the prosecutor's comments were not improper.

The next argument raised by defendant, that has not been forfeited, is his assertion that the prosecutor argued that Detectives Breen and Zalatoris documented defendant's confession to the polygraph examiner, Officer Bartik. As the State correctly notes, the prosecutor was interrupted by defense counsel's objection and the prosecutor did not contend that the detectives documented defendant's statement to Officer Bartik. Instead, the prosecutor's argument was that it did not matter that they did not write down defendant's statement to Officer Bartik because it was the same statement that he gave to them. That argument was based on a reasonable inference supported by the evidence.

Defendant's last claim of error in the State's closing argument concerns the prosecutor's statement that defendant was trying to manipulate the jury and trying to suggest that the jury should focus its attention on the *minutiae* of details that have no importance, and away from the issue in the case. In support of his argument, defendant cites *People v. Johnson,* 208 Ill. 2d 53 (2003).

In *Johnson,* our supreme court explained that "[u]nless predicated on evidence that defense counsel behaved unethically, it is improper for a prosecutor to accuse defense counsel of attempting to create reasonable doubt by confusion, misrepresentation, or deception." *Johnson,* 208 Ill. 2d at 82. Defendant has failed to show how the comment at issue here bears any resemblance to the cumulative error and pervasive pattern of unfair prejudice discussed by the *Johnson* court with respect to the prosecutor's closing argument that attempted to stir the jury's outrage and to divert the jury's attention from more tangible issues regarding guilt or innocence. To the contrary, the prosecutor in the instant case was responding to defense counsel's argument that the prosecutors were doing "that convenient end around and do[ing] their best to try to misdirect you and divert your attention from what the evidence is and have you focus on something else." The prosecutor here was reminding the jury to remember the evidence presented by the State that proved defendant guilty of murder. The comments were not improper.

In sum, none of the State's comments raised by defendant were improper. None of the comments

alone or cumulatively, resulted in substantial prejudice to defendant so as to change the jury's verdict. See *People v. Byron*, 164 Ill. 2d 279, 295 (1995). Based on the record these statements taken in context did not deny defendant a fair trial. For all of the foregoing reasons, we affirm defendant's conviction.

V. Defendant's Concurrent Sentences

We next address the argument raised by the State that defendant's concurrent sentences are void. Section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4(a) (West 2000)) provides that consecutive sentences must be imposed when one of the offenses was a triggering offense. Defendant agrees and further argues that the correct remedy is for this court to vacate the sentences and remand this cause to the trial court for a new sentencing hearing for the circuit court to determine the appropriate sentences to be imposed consecutively. We agree with defendant. See, *e.g.*, *People v. Arna*, 263 Ill. App. 3d 578, 589 (1994), *aff'd* 168 Ill. 2d 107 (1995). We vacate defendant's concurrent sentences and remand this matter to the trial court to conduct a new sentencing hearing and determine the appropriate sentences to be imposed consecutively.

CONCLUSION

For the reasons previously discussed, the record reflects that the evidence was sufficient to prove defendant guilty of first-degree murder, aggravated kidnapping, and concealment of a homicidal death

beyond a reasonable doubt. Additionally, probable cause to arrest defendant existed in this case. Also, defendant's confessions were voluntary. Further, the comments made by the State in closing argument did not substantially prejudice the defendant or deprive defendant of a fair trial. Any improper comments were harmless beyond a reasonable doubt in light of the trial court's instructions and the strength of the evidence against the defendant. Finally, because defendant's concurrent sentences are void, we vacate defendant's concurrent sentences and remand this case for re-sentencing. For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in part, vacated in part, and this case is remanded for re-sentencing. Affirmed in part and vacated in part; cause remanded with directions.

O'MARA FROSSARD, J., with FITZGERALD SMITH, J., and GALLAGHER, P.J.*, concurring.

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* Due to the retirement of Justice John P. Tully, Justice Michael J. Gallagher has been assigned to be the third panel member on this case.

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS	)	CASE NUMBER 03CR0860701
V.	)	DATE OF BIRTH 08/06/84
JOHN FULTON	)	DATE OF ARREST 04/10/03
Defendant	IR NUMBER 1532859	SID NUMBER 050829100

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

==========

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
001	720-5/9-1(A)(1)	MURDER/ INTENT TO KILL/INJ	YRS. 031 MOS. 00	M
	and said sentence shall run concurrent with count(s) 017 018 ___ ___			
017	720-5/10-2(A)(5)	AGGRAVATED KIDNAPING/ ARME	YRS. 025 MOS. 00	X
	and said sentence shall run concurrent with count(s) 001 018 ___ ___			

018 720-5/9.31(A) YRS. 003 MOS. 00 3
and said sentence shall run concurrent with
COUNT(S) 001 017 ____ ___

___ _____ _____ YRS. ___ MOS. ___ ___
and said sentence shall run (concurrent with)
(consecutive to) the sentence imposed on:

___ _____ _____ YRS. ___ MOS. ___ ___
and said sentence shall run (concurrent with)
(consecutive to) the sentence imposed on:

On Count ___ defendant having been convicted of a class ___ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 1353 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____
AND: consecutive to the sentence imposed under case number(s)

_____

IT IS FURTHER ORDERED THAT _____

_____

_____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED: November 30, 2006 ENTERED: 11/30/06

CERTIFIED BY

O DILLARD /s/ James M. Schreier

DEPUTY CLERK JUDGE: SCHREIER, JAMES M. 0458

SUPREME COURT OF ILLINOIS

WEDNESDAY, JANUARY 26, 2011

THE FOLLOWING CASES ON THE LEAVE TO APPEAL DOCKET WERE DISPOSED OF AS INDICATED:

* * *

No. 111269 – People State of Illinois, respondent, v. John Fulton, petitioner. Leave to appeal, Appellate Court, First District. (1-17-0058)

Petition for leave to appeal denied.

* * *